

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

LARRY EUGENE YARBROUGH,)	
)	
Petitioner,)	
)	
v.)	No. CIV-99-632-L
)	
CHARLES RAY, Warden, et al.,)	
)	
Respondents.)	

ORDER

On February 20, 1997, petitioner was sentenced by the District Court of Kingfisher County to life imprisonment without the possibility of parole. His conviction and sentence were affirmed by the Oklahoma Court of Criminal Appeals on August 28, 1998. On May 11, 1999, petitioner filed a petition for writ of habeas corpus attacking this conviction. The petition was dismissed without prejudice at plaintiff's request so that he could exhaust his state court remedies. Thereafter, petitioner filed a motion to resume habeas review, which was denied on October 11, 2000. In the October 11, 2000 Order, the court advised petitioner that he must file a new claim if he wished to pursue habeas relief. Petitioner's second habeas action was not filed until September 10, 2001; it was subsequently dismissed as time-barred.

This matter is before the court on petitioner's Motion for Relief from Judgment pursuant to Rules 60(b)(2) and 60(b)(6) of the Federal Rules of Civil Procedure. Petitioner's Rule 60(b) motion is considered a second habeas petition for purposes of the Antiterrorism and Effective Death Penalty Act ("AEDPA"). See Lopez v. Douglas, 141 F.3d 974, 975 (10th Cir.), *cert. denied*, 525 U.S. 556 (1998). Pursuant to the AEDPA, authorization must be obtained from the Court of Appeals for the Tenth Circuit before a petitioner may file a second or successive motion pursuant to 28 U.S.C. § 2254. See 28 U.S.C. § 2244(b)(3)(A). When a second or successive motion for relief pursuant to 28 U.S.C. § 2254 is filed in this court, the Court of Appeals for the Tenth Circuit has held that the motion should be transferred to it pursuant to 28 U.S.C. § 1631. Coleman v. United States, 106 F.3d 339, 341 (10th Cir. 1997). The Clerk of Court is therefore directed to transfer petitioner's Motion for Relief from Judgment (Doc. No. 22) to the Court of Appeals for the Tenth Circuit for consideration pursuant to 28 U.S.C. § 2244(b)(3)(A).

It is so ordered this 11th day of October, 2005.


TIM LEONARD
United States District Judge